

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
DEC 11 AM 11:25
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

ALLEN BINSTOCK,
Regional Director of
Region 8 of the National
Labor Relations Board,
for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Applicant

V.

MIDWEST TERMINALS OF
TOLEDO INTERNATIONAL, INC.

Respondent

3 15 MC 7141

Case No. 1:15-MC-

JUDGE JUDGE HELMICK

**APPLICATION FOR ORDER
ENFORCING SUBPOENA DUCES TECUM**

The National Labor Relations Board (Board), an administrative agency of the Federal Government, applies to this Court for an order compelling compliance with a subpoena duces tecum that the Board issued and served on Midwest Terminals of Toledo International, Inc. (Respondent). This application is made under Section 11(2) of the National Labor Relations Act, as amended, 29 U.S.C. § 151 et seq., herein the Act. In support of this application, the Board states as follows:

A. This Court has jurisdiction of the subject matter of the proceeding and of Respondent by virtue of Section 11(2) of the Act, 29 U.S.C. § 161(2). The subpoena was issued within this judicial district and Respondent is a domestic corporation chartered under the laws of the United States and incorporated in the State of Ohio, with an office located at 3518 St. Lawrence Drive, Toledo, Ohio 43605. Respondent is engaged in business within this district.

B. This application arises as a result of events in an unfair labor practice proceeding currently pending before the Board pursuant to Section 10(b) of the Act. The Board process leading to that proceeding began with a charge and amended charge filed by the International Longshoremens's Association, Local 1982, AFL-CIO (Union), which alleged that Respondent violated the Act. (Exh. A) After the charge was filed, the Board's Regional Office attempted to investigate the allegations of the charge. Several letters were sent to the Respondent requesting that it cooperate with the investigation and produce documents. Respondent failed and refused to provide the requested information. (Exh. B)

C. In order to properly investigate the unfair labor practice charge allegations, a representative of the agency's General Counsel made a written request for and received a subpoena duces tecum from the Board. On July 31, 2015, the representative of the General Counsel issued subpoena duces tecum B-1-NNRRDX directing Respondent to appear at 10:00 a.m. on August 14, 2015, or at any adjourned or rescheduled date, in a hearing room of the Board's Region 8 office located at 1240 E. 9th Street, Room 1695, Cleveland, Ohio 44199, and to give testimony and to produce the following documents:

1. All security guard and/or security gate records for the time period of December 1, 2014 through May 12, 2015.
2. Shape-up meeting sign in sheets for the time period of March 1, 2015 through May 12, 2015.

A copy of the subpoena is attached as Exhibit C. The issuance of this subpoena is consistent with the requirements of Section 11(1) of the Act and Section 102.31(a) of the Board's Rules and Regulations.

D. The subpoena described above in paragraph C was served on Respondent by addressing it and sending it by certified mail to Respondent's Custodian of Records, at the offices located at 3518 St. Lawrence Drive, Toledo, Ohio 43605. A copy of the return of service certificate is attached as Exhibit D. Service fully complies with Section 11(4) of the Act and Section 102.113 of the Board's Rules and Regulations, 29 C.F.R. § 102.113.

E. On August 10, 2015, pursuant to Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations, Respondent filed a Petition to Revoke the subpoena. (Exh. E) On August 25, 2015, the representative of the General Counsel filed its Opposition to the Respondent's Petition to Revoke and the Regional Director of Region 8 of the Board Allen Binstock referred the matter to the Board for ruling. (Exh. F) On October 28, 2015, the Board denied the Respondent's Petition to Revoke. (Exh. G) On November 11, 2015, Respondent refused to comply with the Board's Order. (Exh. H)

F. Respondent's refusal to appear and to produce the subpoenaed documents, which are relevant to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of Section 11(2) of the Act. Furthermore, Respondent's conduct has impeded and continues to impede the investigation of the unfair labor practice charge before the Board and is preventing the Board from carrying out its duties and functions under the Act.

In view of Respondent's contumacious conduct, the Board requests:

1. That this Court issue an order to show cause directing Respondent to appear before this Court on a date specified in the order to show cause why an order should not issue directing Respondent to produce the subpoenaed records as described above to a representative of the General Counsel at its Region 8 office and to answer all questions relevant to the matters concerning the subpoenaed

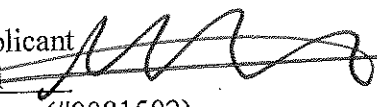
documents and the alleged unfair labor practice. A proposed order is included in the Applicant's submission.

2. After considering arguments in response to the order to show cause, that this Court issue an order directing Respondent to produce the subpoenaed records as described above to a representative of General Counsel at its Region 8 office, and to give testimony and answer to all questions relevant to the matters concerning the subpoenaed documents and the alleged unfair labor practices; and
3. That the Applicant have such other and further relief as may be necessary and appropriate.

Dated: December 11, 2015

National Labor Relations Board
By: Richard E. Griffin, Jr., General Counsel
Iva Choe, Regional Attorney

Attorneys for Applicant


/s/ Gina Fraternali

Gina Fraternali, Esq. (#0081502)

Gina.Fraternali@nlrb.gov

Gregory Gleine, Esq. (#72468)

Gregory.Gleine@nlrb.gov

Susan Fernandez, Esq. (# 38726)

Susan.Fernandez@nlrb.gov

NATIONAL LABOR RELATIONS

BOARD REGION 8

1240 East 9th Street-Room 1695

Cleveland, OH 44199-2086

Ph: (216) 522-3743

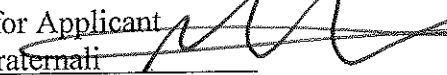
Fax: (216) 522-2418

Certificate of Service

I hereby certify that on December 11, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and mailed by United States Postal Service certified mail, return receipt requested, to the following non-CM/ECF participants:

Midwest Terminals of Toledo International, Inc.
Agent/Registrant
Matthew J Rohrbacher
405 Madison Ave., 8th Floor
Toledo, OH 43604

Ronald Mason, Esq.
Aaron Tulencik, Esq.
Mason Law Firm
P.O. Box 398
Dublin, OH 43017-5357
rmason@maslawfirm.com
atulencik@maslawfirm.com
Counsel for Respondent

Attorney for Applicant

/s/ Gina Fraternali
Gina Fraternali, Esq. (#0081502)
Gina.Fraternali@nlrb.gov
NATIONAL LABOR RELATIONS BOARD
REGION 8
1240 East 9th Street-Room 1695
Cleveland, OH 44199-2086
Ph: (216) 522-3743
Fax: (216) 522-2418